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14 *Attorneys for Plaintiffs*

15 **UNITED STATES DISTRICT COURT**

16 **NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION**

18 SIDNEY SCHOLL and FELTON A. )  
19 SPEARS, JR., on behalf of )  
themselves and all others similarly )  
20 situated, )

21 Plaintiffs, )

22 v. )

23 WASHINGTON MUTUAL, INC. )  
a Washington corporation; )  
24 WASHINGTON MUTUAL BANK, )  
FA (aka WASHINGTON MUTUAL )  
25 BANK); FIRST AMERICAN )  
EAPPRAISEIT, a Delaware )  
26 corporation; and LENDER'S )  
SERVICE, INC., )

27 Defendants. )  
28

**CASE NO.: 5:08-cv-00868 (HRL)**

**CLASS ACTION**

**FIRST AMENDED COMPLAINT FOR  
DAMAGES, EQUITABLE,  
DECLARATORY AND INJUNCTIVE  
RELIEF**

**DEMAND FOR JURY TRIAL**

1 Plaintiffs, by their attorneys, bring this class action against Defendants  
2 Washington Mutual, Inc., Washington Mutual Bank, FA (aka Washington Mutual  
3 Bank)(herein after collectively referred to as "WaMu"), First American eAppraiseIT  
4 ("EA"), and Lender's Service Inc., ("LSI") (collectively "Defendants") on their own  
5 behalf and on behalf of all others similarly situated, and allege as follows based upon  
6 the investigation of their counsel:

### 7 OVERVIEW

8 1. This is a class action against Defendants seeking relief on behalf of  
9 Plaintiffs and a class of all consumers in California and throughout the United States  
10 who, on or after June 1, 2006, received home loans from WaMu, in connection with  
11 appraisals that were obtained through either EA or LSI. Plaintiffs and the Class were  
12 ultimately responsible for paying for these appraisals, which, as described throughout  
13 this Complaint, were not performed in an independent, objective, impartial and  
14 unbiased manner, in violation of applicable law and the contractual requirements for  
15 the appraisal.

16 2. The vast majority of home purchasers in the United States finance their  
17 home purchase through a third party lender. The loan has traditionally been secured  
18 by the lender, who retains a security interest in the property until the loan is repaid in  
19 full. In the event of default, the lender will be entitled to sell off the security interest  
20 (i.e., the property) and recoup the loan amount. Thus, it traditionally has been  
21 critical for the lender to make sure the fair market value of the property equals or  
22 exceeds the value of the loan.<sup>1</sup> To do so, lenders require that, prior to the loan, the  
23 property be professionally appraised to determine its fair market value.

24 3. A real estate appraisal is supposed to be an independent, objective,  
25

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26 <sup>1</sup> Fair market value is the price at which a willing buyer would purchase a  
27 property and a willing seller would sell the same property, when neither party is  
28 under any compulsion to buy or sell, and each party has full knowledge of all  
pertinent facts relating to the sale."

1 impartial, unbiased, credible professional estimate of the fair market value of a  
2 particular property. It typically consists of a visual inspection of the interior and  
3 exterior of a property; inspection of the neighborhood; and a comparison of selling  
4 prices of comparable properties on the street or adjacent areas, among other indicia.  
5 The lender (in this case, WaMu) typically undertakes to procure the appraisal on  
6 behalf of itself and the borrower with the cost of the appraiser's services ultimately  
7 borne by the borrower.

8         4. If an appraisal is properly done, the appraisers perform the appraisal,  
9 and appraisal reviewers review the appraisal report for accuracy and compliance with  
10 applicable standards to create what legal and professional standards term a "credible  
11 appraisal". Appraisers and appraisal reviewers follow federally accepted standards,  
12 the Uniform Standards of Professional Appraisal Practice ("USPAP"), which govern  
13 the ethical and legal aspects of the appraisal undertaking, assessment, reporting and  
14 review process, and establish the minimum standards for performing a "credible  
15 appraisal". These USPAP standards are also adopted by most, if not all, states,  
16 including California. Also they are part of the contractual undertakings expressly  
17 stated in the Uniform Residential Appraisal Report, which is the standard form that  
18 appraisers use for their appraisal reports and which were used for the WaMu loans  
19 that are the subject of this Complaint. These appraisal reports also expressly provide  
20 that they are to be provided to borrowers and acknowledge that borrowers are  
21 permitted to rely on the appraisals as part of any mortgage finance transaction  
22 between borrowers and WaMu.

23         5. The USPAP requirements provide that to promote and preserve the  
24 public trust inherent in professional appraisal practice, an appraiser and an appraisal  
25 reviewer must observe the highest standards of professional ethics to perform and  
26 ensure a "credible appraisal". An appraiser and an appraisal reviewer must perform  
27 assignments ethically and competently, in accordance with USPAP and any  
28 supplemental standards agreed to by the appraiser in accepting the assignment.

1 Under USPAP, an appraiser and an appraisal reviewer must perform assignments  
2 with impartiality, objectivity, and independence, and without bias or accommodation  
3 of personal interests. In appraisal practice under USPAP, an appraiser and an  
4 appraisal reviewer must not perform as an advocate for any party or issue, must not  
5 accept an assignment that includes the reporting of predetermined opinions and  
6 conclusions or favors the cause of any client, must not communicate assignment  
7 results or write a report in a misleading or fraudulent manner, and must not permit an  
8 employee or other person to communicate a misleading or fraudulent report.

9 6. In or about June 2006, WaMu entered an agreement, conspiracy or  
10 scheme with EA and LSI, two purportedly independent appraisal companies, to  
11 handle all of WaMu's home loan appraisals. As part of this arrangement, EA and  
12 LSI received appraisal requests from WaMu, procured local appraisers to perform the  
13 appraisals, reviewed the appraisal reports, and requested, at the behest of WaMu, that  
14 the appraisers make changes before finalizing the reports and providing them to  
15 WaMu to transmit to the borrowers. In reality, WaMu, with the full, unfettered  
16 cooperation of EA and LSI, controlled the process by which individual appraisers  
17 were selected, how home appraisals were performed and, ultimately, the values at  
18 which properties were appraised. EA and LSI consulted directly with WaMu and its  
19 loan officers to establish the property values they desired before EA and LSI (and its  
20 appraisers) finalized the appraisal reports. This conspiratorial conduct allowed  
21 WaMu to direct appraisers to artificially inflate home values and thus provide false  
22 appraisals in order to qualify more people for higher value loans. WaMu would then  
23 aggregate and package these home loans and sell them in the financial markets for a  
24 substantial profit. Ultimately, the higher the volume and value of these loans, the  
25 higher WaMu's profits. In 2006, WaMu made over \$760 million in revenue from  
26 sales and servicing of home mortgage loans.

27 7. As part of the scheme, EA and LSI each received millions of dollars in  
28 appraisal fees from unsuspecting WaMu borrowers who, despite paying for what

1 should have been credible appraisals (i.e., done in compliance with applicable legal  
2 and professional standards so as to provide an independent, unbiased, and objective  
3 appraisal of the fair market value of their property), instead unwittingly received  
4 biased appraisals that were neither independent, objective or in compliance with  
5 legal and professional standards. Each borrower was charged for a credible, lawful  
6 appraisal, but as a result of the arrangement between WaMu, EA and LSI, no  
7 credible, lawful appraisal was performed. WaMu borrowers (i.e., Plaintiffs and the  
8 Class) were damaged thereby.

9       8. EA has its principal place of business in Poway, California and operates,  
10 manages and directs its nationwide appraisal services and business operations from  
11 its offices in California. Likewise, LSI has two of its three nationwide operation  
12 centers in California, from which LSI operates and directs the majority, or at least a  
13 substantial proportion, of its nationwide appraisal services and business operations.  
14 A majority of WaMu's home loan portfolio are loans made in California, according  
15 to its 2006 Annual Report. It is therefore believed and averred that the agreements,  
16 conspiracy and misconduct at issue in this Complaint occurred, was conducted  
17 and/or was directed primarily from, or at least a substantial proportion emanated  
18 from, California, including, but not limited to: a) the designation and assignment of  
19 appraisers for WaMu home loans; b) the review, approval and revision of appraisals  
20 for WaMu home loans to meet WaMu's expectations; and c) the management and  
21 supervision of appraisal services for WaMu home loans to Plaintiffs and the Class.

22       9. Defendants' conduct violates the Real Estate Settlement Procedures Act,  
23 12 U.S.C. section 2607, the unlawful, unfair and fraudulent prongs of California's  
24 Business and Professions Code section 17200, *et seq.* (the "UCL") as well as the  
25 Consumer Legal Remedies Act ("CLRA"). Defendants' conduct also constitutes an  
26 unlawful civil conspiracy. Defendants' conduct also breaches their contracts with  
27 Plaintiffs and the Class, either directly or because Plaintiffs and Class members are  
28 intended beneficiaries of the contracts, or Defendants' services, or is grounds for

1 restitution on a quasi-contract/unjust enrichment basis.

2 **PARTIES**

3 10. Plaintiff, Sidney Scholl, is an individual who is a citizen of the State of  
4 California, residing in Sonoma County, California. In October, 2006, Ms. Scholl  
5 entered a mortgage loan through WaMu's offices in Sonoma, California to purchase  
6 a property located at 194 Terrace, Edmond, Oklahoma. In connection with this loan,  
7 WaMu procured for itself and Ms. Scholl an appraisal on the subject property from  
8 EA and/or LSI that was performed pursuant to the scheme alleged in this Complaint.  
9 Ms. Scholl was charged for this appraisal.

10 11. Plaintiff, Felton A. Spears, Jr., is an individual who is a citizen of the  
11 State of California, residing in San Jose, California. In March, 2007, Mr. Spears  
12 entered a mortgage loan with WaMu on a property located in San Jose, California.  
13 In connection with this loan, WaMu procured for itself and Mr. Spears an appraisal  
14 of the subject property from EA and/or LSI that was performed pursuant to the  
15 scheme alleged in this Complaint. Mr. Spears was charged for this appraisal.

16 12. Defendants Washington Mutual, Inc. and Washington Mutual Bank, FA  
17 (aka Washington Mutual Bank)(herein after collectively referred to as "WaMu")  
18 collectively operate as a consumer and small business banking company in the  
19 United States with assets totaling \$346 billion. WaMu operates in four segments:  
20 Retail Banking, Card Services, Commercial, and Home Loans. The Home Loans  
21 segment originates and services home loans, manages capital market operations,  
22 fulfills and services a portfolio of home equity loans and lines of credit, originates  
23 and purchases mortgage loans to higher risk borrowers, provides financing and other  
24 banking services to mortgage bankers for the origination of mortgage loans, and  
25 offers insurance-related products and reinsurance services. This segment offers  
26 various real estate secured residential loan products and services primarily consisting  
27 of fixed-rate home loans, adjustable-rate home loans, hybrid home loans, option  
28 ARM loans, and mortgage loans to higher risk borrowers. As of December 31, 2006,



1 the company operated 2,225 retail banking stores and 472 lending stores and centers  
2 in 36 states, including California. According to the company's 2006 Annual Report,  
3 the majority of WaMu's home loan portfolio are loans made in California.

4 13. Defendant First American eAppraiserIT ("EA") is a Delaware  
5 corporation with its principal place of business at 12395 First American Way,  
6 Poway, California. EA is a subsidiary of The First American Corporation and is a  
7 California corporation with its principal place of business at 1 First American Way,  
8 Santa Ana, California.

9 14. Defendant Lender's Service Inc. is one of the country's largest providers  
10 of property valuation, title and closing services to the first mortgage, home equity,  
11 and subprime markets, as well as to mortgage servicers and investors. LSI is a  
12 subsidiary of Fidelity National Information Services, a corporation incorporated in  
13 Georgia and headquartered in Jacksonville, Florida. LSI maintains three operation  
14 centers, two of which, Santa Ana and Sacramento, are located in California.

#### 15 **JURISDICTION AND VENUE**

16 15. Jurisdiction of this Court is proper under 28 U.S.C. §1331(federal  
17 question jurisdiction) and §1367(supplemental jurisdiction). Plaintiffs assert a  
18 federal claim under RESPA, 12 U.S.C. §2607, and supplemental state law claims.

19 16. Jurisdiction of this Court is alternatively proper under 28 U.S.C.  
20 §1332(d)(2). Plaintiffs are citizens of the State of California and reside in Sonoma  
21 and San Jose, California. Defendant WaMu is incorporated in the State of  
22 Washington and has its corporate headquarters in Seattle, Washington. Defendant  
23 EA is incorporated in the State of Delaware and has its principal place of business in  
24 Poway, California. Defendant LSI has two of its three main operation centers  
25 located in Santa Ana, California and Sacramento, California. A substantial portion  
26 of the conduct at issue in this lawsuit took place in one or more of Defendants'  
27 California offices.

28 17. The amount in controversy exceeds \$5,000,000 for Plaintiffs and Class

1 members collectively, exclusive of interest and costs, by virtue of the combined cost  
2 of appraisals performed by EA and LSI for WaMu, and the revenue and profit reaped  
3 by Defendants from their transactions with Plaintiffs and the Class, as a direct and  
4 proximate result of the wrongful conduct alleged herein, and by virtue of the  
5 statutory, exemplary and/or punitive damages alleged herein.

6 18. Venue is proper within this judicial district pursuant to 28 U.S.C. §  
7 1391(b), (c) and (d). Defendant EA has agents, transacts business and is otherwise  
8 found within this judicial district. Defendant LSI has agents, transacts business, and  
9 is otherwise found within this judicial district. Defendant WaMu has agents,  
10 transacts business and is otherwise found within this judicial district. A substantial  
11 portion of the transactions and events complained of herein, including Plaintiffs',  
12 occurred in this judicial district, a substantial portion of the affected persons and  
13 entities are in this judicial district, and Defendants have received substantial  
14 compensation from such transactions and business activity in this judicial district,  
15 including the transaction Plaintiffs entered with Defendant. Finally, Defendants  
16 inhabit and/or may be found in this judicial district, and the interstate trade and  
17 commerce described herein is and has been carried out in part within this judicial  
18 district.

### 19 **BASIC FACTUAL ALLEGATIONS**

#### 20 **The Real Estate Mortgage Industry** 21 **Provides Incentives for High Appraisals**

22 19. WaMu is the country's largest savings and loan with assets totaling  
23 \$346 billion. During the first three quarters of 2007 alone, WaMu originated \$116  
24 billion in residential mortgage loans. WaMu procures more appraisals from EA and  
25 LSI than any other single entity.

26 20. Traditionally, a lender such as WaMu would have an interest in ensuring  
27 that a borrower is able to repay a home loan, and that the loan is adequately  
28 collateralized in case the borrower defaults. Likewise, a consumer borrowing money



1 for a home loan places their trust in the lender to procure a credible appraisal (i.e.,  
2 one done in compliance with applicable legal and professional standards so as to  
3 provide an independent, objective and unbiased appraisal of their home's value) and  
4 to lend them money on terms appropriate to that independent, objective and unbiased  
5 assessment of that home's fair market value. Traditionally, the borrower and lender  
6 shared a common interest in having a property independently and objectively  
7 appraised to ensure both that the borrower was not paying too much, and that the  
8 property value could support repayment of the loan in the event of a default.

9       21. Because historically banks retained ownership of the loan and mortgage  
10 for the life of the loan, the banks' primary interest was to make sure that the  
11 borrower paid off the principal and interest without delay or default. Whenever a  
12 borrower defaulted on a loan it would have a direct financial impact on the lender,  
13 i.e. loss or threatened loss of principal and interest on the loan. If the loan was  
14 properly based on the actual fair market value of the property, however, the lender  
15 would be able to sell the loan and recoup the outstanding principal. Accordingly, it  
16 was critical that the market value of the property was properly appraised and that the  
17 loan amount reflected that value.

18       22. In recent years the traditional model, whereby banks held a mortgage  
19 loan until it was paid off, has changed. Banks such as WaMu no longer hold all, or  
20 even most of their mortgage loans, but instead sell them to investment banks or  
21 government sponsored enterprises such as the Federal National Mortgage  
22 Association ("Fannie Mae") or the Federal Home Loan Mortgage Corporation  
23 ("Freddie Mac"). These loans are then pooled together, securitized, and sold to the  
24 general public as mortgage backed securities, allowing lenders such as WaMu to  
25 profit from the volume and value of loans it has procured. The larger the aggregate  
26 value of the loans, the more profit for the lender.

27       23. The paradigm shift away from retaining a portfolio of loans towards the  
28 sale of mortgage backed securities fundamentally altered a lender's incentive to issue

1 quality loans. By selling the vast majority of their mortgage loan portfolio to other  
2 companies, banks no longer assumed the risk of a bad loan. The risk of default was  
3 passed on to other companies and eventually the investors who bought mortgage  
4 backed securities. More importantly, now bank profit directly correlated to the  
5 volume and value of loans generated, not the likelihood that a loan would be repaid.  
6 Banks were thus incentivized to offer as many loans at the highest dollar amounts  
7 that could be offered with little regard to whether the loan could be paid back.

8 24. In this environment, there remains little incentive for Wamu to obtain a  
9 credible appraisal of a property's real market value and every incentive to offer the  
10 highest loan amounts possible, supporting the loans with biased, artificially inflated,  
11 false appraisals.

12 **Federal and State Laws Require Appraisal Independence**

13 25. Despite the new economic paradigm fueling the mortgage lending  
14 industry, state and federal regulations require that appraisals be "credible" by being  
15 independent, objective, unbiased and performed in compliance with the minimum  
16 standards set forth in the Uniform Standards of Professional Appraisal Practice  
17 ("USPAP"). These USPAP standards are incorporated into federal law, *see* 12  
18 C.F.R. § 34.44, are incorporated into many, if not all, state laws, including  
19 California, *see* California Business and Professions Code §11319, and are part of the  
20 contractual undertakings expressly stated in the Uniform Residential Appraisal  
21 Report, which is the standard form that appraisers use for their appraisal reports and  
22 which were used for the WaMu loans that are the subject of this Complaint. These  
23 appraisal reports also expressly contemplated that they would be provided to  
24 borrowers and acknowledged that borrowers may rely on the appraisals as part of any  
25 mortgage finance transaction between borrowers and WaMu.

26 26. USPAP requires appraisers to conduct their appraisals independently:  
27 "An appraiser must perform assignments with impartiality, objectivity, and  
28 independence, and without accommodation of personal interests. In appraisal

1 practice, an appraiser must not perform as an advocate for any party or issue. An  
 2 appraiser must not accept an assignment that includes the reporting of predetermined  
 3 opinions and conclusions.” USPAP Ethics Rules (Conduct).

4 27. USPAP requires appraisers to communicate their appraisals honestly:  
 5 “An appraiser must not communicate assignment results in a misleading or  
 6 fraudulent manner. An appraiser must not use or communicate a misleading or  
 7 fraudulent report or knowingly permit an employee or other person to communicate a  
 8 misleading or fraudulent report.” USPAP Ethics Rules (Conduct).

9 28. USPAP requires that “[i]n developing a real property appraisal, an  
 10 appraiser must: (a) be aware of, understand, and correctly employ those recognized  
 11 methods and techniques that are necessary to produce a credible appraisal...”  
 12 USPAP Standards Rule 1-1.

13 29. USPAP also requires that “[e]ach written real property appraisal report  
 14 must contain a signed certification that is similar in content to the following form:

15 I certify that, to the best of my knowledge and belief:

- 16 - the statements of fact contained in this report are true and correct.
- 17 - the reported analyses, opinions, and conclusions are limited only by the  
 18 reported assumptions and limiting conditions and are my personal,  
 19 impartial, and unbiased professional analyses, opinions, and  
 20 conclusions.
- 21 - I have no (or the specified) present or prospective interest in the  
 22 property that is the subject of this report and no (or the specified)  
 23 personal interest with respect to the parties involved.
- 24 - I have no bias with respect to the property that is the subject of this  
 25 report or to the parties involved with this assignment.
- 26 - my engagement in this assignment was not contingent upon developing  
 27 or reporting predetermined results.
- 28 - my compensation for completing this assignment is not contingent upon  
 the development or reporting of a predetermined value or direction in  
 value that favors the cause of the client, the amount of the value  
 opinion, the attainment of a stipulated result, or the occurrence of a  
 subsequent event directly related to the intended use of this appraisal.
- my analyses, opinions, and conclusions were developed, and this report  
 has been prepared, in conformity with the *Uniform Standards of*

1                   *Professional Appraisal Practice.*"

2           The appraisal reports for the WaMu loans that are the subject of this  
3 Complaint contained this or a materially identical certification.

4           30.   The same or similar USPAP ethics rules, standards and certifications are  
5 required for appraisal reviewers (i.e., appraisers who perform a quality review of  
6 another appraiser's report). Such appraisal reviews were performed by EA and LSI  
7 appraisal reviewers on the appraisal reports for the WaMu loans that are the subject  
8 of this Complaint.

9           31.   Federal law mandates that appraisers involved in federally-regulated  
10 transactions operate independently. *See* 12 U.S.C. §§ 3331 *et seq.* The Federal  
11 Regulations provide that for independent contractors or "fee" appraisers, the  
12 appraiser shall "have no direct or indirect interest, financial or otherwise, in the  
13 property or the transaction." 12 C.F.R. 34.45.

14           32.   In 2005, federal regulators, including the Office of Thrift Supervision  
15 ("OTS"), published "Frequently Asked Questions on the Appraisal Regulations and  
16 the Interagency Statement on Independent Appraisal and Evaluation Functions."  
17 With regard to appraisal independence, the statement provides:

- 18                   3.           Who should be considered the loan production staff  
19                               for purpose of achieving appraisal independence?  
20                               Could loan production staff select an appraiser?

21  
22           Answer:   The loan production staff consists of those  
23                       responsible for generating loan volume or approving  
24                       loans, as well as their subordinates. This would  
25                       include any employee whose compensation is based  
26                       on loan volume. Employees responsible for credit  
27                       administration function or credit risk management are  
28                       not considered loan production staff. **Loan**

1                                    **production staff should not select appraisers.**

2  
3                    5.            When selecting residential appraiser, may loan  
4                                    production staff use a revolving pre-approved  
5                                    appraiser list, provided the list is not under their  
6                                    control?

7  
8                    Answer:    Yes, loan production staff may use a revolving board-  
9                                    approved list to select a residential appraiser,  
10                                  provided the development and maintenance of the list  
11                                  is not under their control. **Staff responsible for the**  
12                                  **development and maintenance of the list should be**  
13                                  **independent of the loan production process.**  
14                                  **Further, there should be periodic interval review**  
15                                  **of the appraiser selection process to ensure that**  
16                                  **appropriate procedures are being followed and**  
17                                  **that controls exist to ensure independence.**  
18                                  (Emphasis added).

19  
20                                    **LSI and EA**

21                                    **Conspired With WaMu to Provide Artificial Appraisals**

22                    33.    In 2006, responding to these federal regulations, as well as threats of  
23                                  strict federal enforcement of appraiser independence in the mortgage lending  
24                                  industry, WaMu attempted to insulate itself from criticism and federal oversight by  
25                                  entering into an agreement with two purportedly independent Appraisal Management  
26                                  Companies (“AMCs”), First American eAppraiseIT and Lender’s Services, Inc.,  
27                                  whereby WaMu would procure appraisals from these two AMCs on behalf of  
28                                  borrowers for all or nearly all WaMu residential loans nationwide, with the cost of

1 the appraisals being charged to the borrowers at the time of the closing of their loans.  
2 These two AMCs were engaged to oversee the appraisal process and provide a barrier  
3 of independence between WaMu (the lender) and those hired to appraise properties  
4 on which it would provide mortgage loans. In theory, these AMCs were to select  
5 appraisers independent of WaMu, serve as the sole contact with the appraiser, review  
6 the appraiser's report, and communicate the unbiased results and report to WaMu.  
7 WaMu would in turn communicate the appraisal results and reports to WaMu  
8 borrowers so both the borrower and lender could rely on them in entering the  
9 mortgage loans. Under this arrangement, WaMu would theoretically not be able to  
10 improperly influence the appraiser or the ultimate value placed on a property.

11 34. Both EA and LSI tout themselves as unbiased appraisers who abide by  
12 USPAP requirements. As reported on its website, EA assures consumers that it uses  
13 "only the services of appraisers licensed or certified by the state in which a subject  
14 property is located" and "customers can be assured that Uniform Standards of  
15 Professional Appraisal Practice and Financial Institutions Reform Recovery and  
16 Enforcement Act ("FIRREA") guidelines are followed and that each appraisal is  
17 audited for compliance." Likewise, LSI assures consumers that its appraisals  
18 "conform to USPAP requirements."

19 35. In or about June 2006, WaMu retained EA and LSI to administer  
20 WaMu's appraisal program. Since this time, EA and LSI have performed nearly all  
21 of WaMu's appraisals. WaMu borrowers quickly became both EA's and LSI's  
22 largest source of revenue. Since June 2006, EA alone has received over \$50 million  
23 in fees from borrowers who received loans through WaMu.

24 36. Prior to being retained by WaMu, EA and LSI used a combination of  
25 internal staff and third party appraisers to service Wamu borrowers. Although the  
26 independence of the appraiser is critical to the appraisal process, soon after retaining  
27 EA and LSI to administer the WaMu appraisal program, WaMu identified certain  
28 appraisers ("Preferred Appraisers") that WaMu requested conduct residential



1 property appraisals for its loans. At first these preferred appraisers were simply  
2 added to the list of possible appraisers to conduct appraisals for WaMu loans, but  
3 eventually WaMu demanded that all of its appraisals be done by the Preferred  
4 Appraisers. Despite USPAP and FIRREA requirements that appraisers be  
5 independent, EA and LSI acquiesced to WaMu's demand to staff appraisals with  
6 Preferred Appraisers.

7 37. Additionally, WaMu encouraged EA and LSI to hire former WaMu  
8 employees as staff appraisers and appraisal business managers, the latter of which  
9 had authority to override and/or revise the values reached by third party appraisers.  
10 Both LSI and EA agreed to WaMu's request and took on new employees who  
11 formerly worked for WaMu as its appraisers and regional managers.

12 38. Moreover, pursuant to contractual agreements between WaMu and the  
13 AMCs, WaMu had the right to challenge an appraiser's conclusions by requesting a  
14 "reconsideration of value" (also known as a "ROV" or "rebuttal") when WaMu did  
15 not like the appraised value of a home. This rebuttal system gave WaMu a direct way  
16 to request that EA or LSI reconsider an appraiser's report and to raise the value  
17 assigned to a given home. WaMu frequently used this "reconsideration of value"  
18 technique to get EA and LSI to provide higher appraisal values on homes to enable  
19 its loan origination staff to close the loans.

20 39. In addition to WaMu's contractual ability to request a re-appraisal of  
21 property valuation, the AMCs' Appraisal Business Managers, hired at the request of  
22 WaMu, were given unfettered authority to override the values prescribed by third  
23 party appraisers. According to a complaint filed by the New York Attorney General  
24 ("NYAG") against EA, a WaMu executive defined the role of EA's Appraisal  
25 Business Managers in terms of value disputes in the following way:

26 ... the four appraisers/reviewers would be directly involved in  
27 escalations dealing with: ROVs, Valuation issues where the purchase  
28 price and appraised value differ with no reconciliations/justifications by

1 the appraiser, Value cuts which we continue to receive from your third  
2 party reviewers (Wholesale), **proactively making a decision to**  
3 **override and correct the third party appraiser's value or reviewer's**  
4 **value cut**, when considered appropriate and supported...

5 Through these Appraisal Business Managers, WaMu sought to, and did, ensure that  
6 home valuations would be sufficient to support the loan WaMu wanted to provide.

7  
8 **Guaranteed High Appraisals Were Facilitated Through**  
9 **Instituting WaMu's Preferred Appraiser List**

10 40. Soon after entering its arrangement with EA and LSI, WaMu's loan  
11 origination staff began complaining about the appraisals performed by these AMCs  
12 having property values too low for the proposed loans. WaMu's loan origination  
13 staff received commissions based on the value and volume of loans generated. Their  
14 dissatisfaction was based on desire to close loans at amounts higher than the  
15 appraisals justified.

16 41. For example, according to the NYAG's complaint, as early as August 9,  
17 2006, WaMu's internal staff admonished EA for not providing appraisals at the  
18 values they wanted. In response to this acknowledged, improper pressure coming  
19 from WaMu's loan origination staff who desired the higher appraisals, EA's  
20 Executive Vice President capitulated to WaMu's demands by giving its Appraisal  
21 Business Managers discretion to raise the value of homes up to \$50,000.

22 42. In order to guarantee WaMu would get the high appraisals it wanted,  
23 without having to go through the delay of the rebuttal system, by the winter of 2007,  
24 WaMu insisted that EA and LSI use WaMu's "Preferred Appraisers" for all of  
25 WaMu's home loan appraisals. These appraisers were individuals whom WaMu was  
26 confident would appraise properties at a high inflated value to ensure WaMu could  
27 quickly close the loan at a desired amount, and get as much value from the  
28 transaction as possible.

1        43. According to the NYAG's complaint, both EA and LSI were complicit  
2 with WaMu's demands to exclusively use Preferred Appraisers. In an email dated  
3 February 22, 2007, EA's President explained to senior executives at EA's parent  
4 corporation, First American, that:

5        We had a joint call with Wamu and LSI today. The attached document  
6 outlines the new appraiser assigning process. In short, we will now  
7 assign all WaMu's work to WaMu's "Proven Appraisers" ... We will pay  
8 their appraisers whatever they demand. **Performance ratings to retain**  
9 **position as a Wamu Proven Appraiser will be based on how many**  
10 **come in on value, negating a need for an ROV.** (Emphasis added).  
11

12        **WaMu's "Preferred Appraiser List" Included Only Appraisers**  
13        **Selected and Controlled by WaMu's Loan Origination Staff**

14        44. The individuals on the "Preferred Appraiser List" were hand selected by  
15 WaMu's loan origination staff. Requests sent to WaMu's AMCs for the addition of  
16 specific appraisers to the approved list were often sent by WaMu's loan origination  
17 staff themselves. WaMu's Vice President of "Appraisal Oversight" – the division of  
18 WaMu that is supposed to be responsible for ensuring that no undue influence is  
19 exerted by WaMu's loan origination staff on appraisers – stated in an email to EA  
20 regarding one ROV for a "low value," that "[t]his is an example of the issue that has  
21 caused sales pushing for a 'proven appraiser' process."

22        45. In an email dated March 5, 2007, WaMu confirmed the role of its loan  
23 origination staff in choosing specific appraisers for WaMu's "Proven Appraiser  
24 List:"

25        Proven Appraiser List is being created. This will replace the WaMu  
26 preferred list. **The initial list of names will be provided by lending**  
27 with a minimum of two appraisers per area/county. The list will then be  
28 reviewed and approved by the Appraisal Business Oversight Team and

1 will be checked against our most recent ineligible list. Final list will be  
2 provided to VMC's [vendor management companies]. Majority of work  
3 must be assigned to the appraisers on the Proven Appraiser List on a  
4 Priority Basis. (Emphasis added).

5 46. Any review and approval by WaMu's Appraisal Business Oversight  
6 Team was a facade. If an AMC went to WaMu's Appraisal Business Oversight team  
7 to discuss the pressure being put on it by WaMu's loan origination staff to provide  
8 higher home appraisal values, WaMu responded by telling the AMC to work the  
9 issue out directly with the lending staff. WaMu insisted that its loan origination staff  
10 have direct contact with appraisers so they could get the appraisals at the value they  
11 wanted. Both EA and LSI permitted this direct involvement to occur.

12 47. Appraisers were also aware that the Proven Appraisers were being  
13 selected by WaMu's loan origination staff, and that the only way for an appraiser to  
14 get onto the list was by giving WaMu's origination staff the appraisals they sought.  
15 According to the NYAG's complaint, in an email sent on April 17, 2007 to EA's staff  
16 appraisers to explain why staff appraisers were removed from WaMu's Proven  
17 Appraiser List, EA's manager acknowledged WaMu's loan origination staff's  
18 involvement in the selection of appraisers to perform WaMu's appraisals:

19 I thought I [sic] pass on my thoughts regarding the recent message that  
20 we all received for [sic] Peter last weekend. I will be glad to tell you  
21 what I know. I have been told that the lending folks at Wamu and [sic]  
22 were unhappy with the AMC's and felt they were not receiving a good  
23 level of appraisal work. They therefore decided to construct their own  
24 appraisal panel, now known as the wamu proven panel, and instructed  
25 the AMC's to utilize appraisers from this panel whenever possible. The  
26 end result is that if you are not on this proven panel it is very unlikely  
27 you will receive wamu work.

28 48. The involvement of WaMu's loan origination staff in selecting

1 appraisers to perform WaMu's home loan appraisals was readily apparent to all  
2 parties involved and evidenced by emails sent by WaMu's origination staff to EA and  
3 LSI requesting the addition of specific appraisers to the Proven Appraiser List. In an  
4 email identified in the NYAG's complaint, EA's Executive Vice President informed  
5 EA's President that "currently WAMU is controlling the appraisal panel. They are  
6 selecting appraisers and calling them 'proven' appraisers. These appraisers are being  
7 chosen by their sales force. First American eAppraiseIT (FA eAppraiseIT) is  
8 obligated to use these appraisers." The stated reason WaMu insisted on only using  
9 its 'proven' appraisers was because EA's appraisers provided WaMu with "low  
10 values."

11 49. In addition to selecting which appraisers were on the Proven Appraiser  
12 List, WaMu's loan origination staff was responsible for removing appraisers from the  
13 list who did not comply with staff expectations or requests for high appraisals, or  
14 who performed desk evaluations of other appraisals and reduced another appraiser's  
15 valuation of one of WaMu's customer's properties.

16 **WaMu's Proven Appraiser List is Illegal**

17 50. The Code of Federal Regulations provides that for independent  
18 contractors or "fee" appraisers, the appraiser shall "have no direct or indirect interest,  
19 financial or otherwise, in the property or the transaction." 12 C.F.R. 34.45. In  
20 addition, the Uniform Standards of Professional Appraisal Practice ("USPAP") are  
21 incorporated into federal law, *see* 12 C.F.R. § 34.44, are incorporated into many, if  
22 not all, states' laws, including California, and are expressly incorporated as part of  
23 the Uniform Residential Appraisal Report used as the standard form for the appraisal  
24 reports for the WaMu loans that are the subject of this Complaint. USPAP requires  
25 appraisers and appraisal reviewers to provide and ensure "credible" appraisals by  
26 complying with USPAP and other applicable legal and professional requirements,  
27 which include, among other things, the requirement that appraisals and appraisal  
28 reviews be conducted independently and without bias: "An appraiser must perform

1 assignments with impartiality, objectivity, and independence, and without  
2 accommodation of personal interests. In appraisal practice, an appraiser must not  
3 perform as an advocate for any party or issue.” USPAP Ethics Rules (Conduct).

4 51. Despite the requirement that appraisers be unbiased, independent, and  
5 have no direct or indirect interest in the home mortgage transaction, the agreements  
6 between WaMu and EA and LSI establishing WaMu’s Proven Appraiser List put in  
7 place an appraisal system that was anything but unbiased and independent. Those  
8 appraisers willing to provide WaMu with its desired high appraisals for home  
9 mortgage transactions were paid an additional 20% WaMu preferred appraisal fee for  
10 each appraisal. Those appraisers unwilling to bend to WaMu’s, EA’s and LSI’s  
11 desire to provide WaMu with high appraisals were removed from the Proven  
12 Appraiser List by WaMu’s loan origination staff, and were thereafter prohibited from  
13 providing appraisals for WaMu by EA or LSI. Appraisers, therefore, had a stake in  
14 each and every appraisal they performed for WaMu. They were rewarded financially  
15 for providing high home appraisal values through the 20% premium for each WaMu  
16 appraisal performed, and were rewarded by staying on WaMu’s “Proven Appraiser  
17 List” for future WaMu appraisals.

18 52. EA and LSI likewise had a financial incentive to provide WaMu with the  
19 specific appraisers WaMu wanted. If either EA or LSI did not agree to provide  
20 WaMu with appraisers from WaMu’s Proven Appraiser List, they faced losing  
21 millions of dollars of business on WaMu’s loans.

22 53. EA recognized that WaMu’s Proven Appraiser List was unlawful, but  
23 chose to go along with WaMu and continued providing illegal appraisal services in  
24 order to reap millions of dollars from unsuspecting borrowers. According to the  
25 NYAG’s complaint, in an email from EA’s president to senior executives of First  
26 American dated April 17, 2007, EA described the relationship with WaMu as  
27 follows: “In short, the issuers are using their designated appraisers as mandated by  
28 the WaMu production force at 20% gross margin and bypassing our panel. We view



1 **this as a violation of the OCC, OTS, FDIC and USPAP influencing regulation.”**  
2 (Emphasis added). In support of EA’s conclusion that its agreement with WaMu was  
3 illegal, EA’s Executive Vice President prepared a summary of the guidelines  
4 regarding appraiser independence and, compared to WaMu’s Proven Appraiser List,  
5 concluded the following:

6 Based on our conversations we have had with the WAMU oversight as  
7 well as the questions and answers initiated by our competitor LSI, **it is**  
8 **our interpretation that the loan production staff has a great deal to**  
9 **do with selecting appraisers. The PAL [Proven Appraiser List] has**  
10 **been selected by the loan production staff and the continued use of**  
11 **these appraisers is being monitored by the loan production staff.**

12 For example, on the LSI question #1 “Does WAMU want to be updated  
13 transactionally on every order we can not assign to a PAL?”, WAMU’s  
14 answer is “Yes, we need a short sentence in the message log so that we  
15 can monitor, – AND most important – lending can see why you didn’t  
16 assign to a PAL service provider. Not using a PAL appraiser will be an  
17 issue so we need to ensure we’ve covered our bases as to why they’re  
18 not utilized.” **This appears to be directly in contradiction to the**  
19 **interagency guidelines unless you have a different interpretation.**

20 (Emphasis added).

21 54. Both EA and LSI knew that what WaMu was doing, by having its loan  
22 origination staff personally select appraisers, was illegal, and that by agreeing to  
23 provide WaMu with its “Proven Appraisers” EA and LSI were acting as co-  
24 conspirators. According to the NYAG’s complaint, in an email dated April 17, 2007,  
25 EA’s Executive Vice President wrote to EA’s President and Chief Operating Officer  
26 regarding EA’s liability on this:

27 OTS and OCC only control lenders. However, there is the legal concern  
28 about collusion. For example, let’s say it is discovered that a lender

1 (loan officer at a lender) is being collusive with an appraiser that is on  
2 OUR (WAMU) panel. That is, our reps and warrants apply. Then we  
3 are liable I would say because we have gone along with it.... In addition,  
4 I think it will tarnish our reputation in the appraisal community because  
5 we are allowing WAMU to pick appraisers based on their loan officers.  
6 It makes us look complicit. So [it] may not be actionable  
7 legally but would hurt our reputation. So those are two bad things  
8 off the cuff. There may be more if we think about it and use  
9 creative paranoia.

10 55. Despite increasing regulatory scrutiny, rather than abandon the Proven  
11 Appraiser List, WaMu sought to obfuscate its misfeasance by changing the name of  
12 its Proven Appraiser List to the "WaMu Select" panel. WaMu stated that the, "Name  
13 change from 'proven appraiser' and/or use of the moniker "PAL" list is discontinued,  
14 under direction of the WaMu legal department. We are utilizing a more generic term  
15 acceptable w/in regulatory guidelines and industry standards."

16 56. As a result of WaMu's, EA's and LSI's arrangement, conspiracy and  
17 scheme, thousands of WaMu borrowers who collectively paid millions of dollars for  
18 "independent, unbiased, and credible" appraisals, failed to receive what they paid for  
19 and were damaged thereby.

20 **PLAINTIFF SIDNEY SCHOLL**

21 57. Plaintiff, Sidney Scholl, is an individual who is a citizen of the State of  
22 California, residing in Sonoma County, California.

23 58. In October, 2006, Ms. Scholl entered a mortgage loan through WaMu's  
24 offices in Sonoma, California to purchase a property located at 194 Terrace, Edmond,  
25 Oklahoma. See Exhibit 1 (Settlement Statement).

26 59. In connection with this loan, WaMu procured for itself and Ms. Scholl  
27 an appraisal on the subject property from EA and/or LSI. See Exhibit 2 (appraisal  
28 report). The appraisal report, utilizing the Uniform Residential Appraisal form,

1 certifies that it was completed in compliance with the USPAP standards, including  
2 being performed in an independent, objective and unbiased manner. *Id.* It also  
3 acknowledges that the appraisal was performed for WaMu and EA and provided to  
4 them and LSI, and was contemplated to be disclosed to and could be relied upon by  
5 the borrower, Ms. Scholl, in her mortgage loan transaction with WaMu. *Id.* Ms.  
6 Scholl was charged \$255.00 for this appraisal.

7         60. Ms. Scholl understood she was purchasing a credible, lawful appraisal  
8 and had no reason to doubt the certification in the appraisal report and therefore  
9 believed that the appraisal done on her property was performed independently,  
10 objectively, without undue influence or bias to affect the value of the home, and was  
11 otherwise a credible, lawful appraisal done in compliance with applicable law. It was  
12 upon this appraisal that Ms. Scholl and WaMu entered her loan.

13         61. Contrary to Ms. Scholl's belief and unbeknownst to her until shortly  
14 before filing this Complaint, the appraisal for the property that was the subject of her  
15 WaMu loan was created pursuant to the scheme described in this Complaint and  
16 therefore Ms. Scholl did not receive the independent, objective, unbiased and  
17 credible appraisal done in compliance with applicable law for which she paid, since  
18 no such appraisal was performed by WaMu, EA, LSI or their agents. Ms. Scholl has  
19 been damaged thereby.

20                     **PLAINTIFF FELTON A. SPEARS JR.**

21         62. Plaintiff, Felton A. Spears, Jr., is an individual who is a citizen of the  
22 State of California, residing in San Jose, California.

23         63. In March, 2007, Mr. Spears entered a mortgage loan with WaMu on a  
24 property located in San Jose, California. See Exhibit 3 (Closing Statement).

25         64. In connection with this loan, WaMu procured for itself and Mr. Spears  
26 an appraisal on the subject property from EA and/or LSI. It is believed that the  
27 appraisal report, utilizing the Uniform Residential Appraisal form, certifies that it  
28 was completed in compliance with the USPAP standards, including being performed

1 in an independent, objective and unbiased manner. *Id.* It is also believed that the  
2 appraisal report acknowledges that the appraisal was performed for WaMu and EA  
3 and provided to them and LSI, and was contemplated to be disclosed to and could be  
4 relied upon by the borrower, Mr. Spears, in his mortgage loan transaction with  
5 WaMu. *Id.* Mr. Spears was charged approximately \$361.00 for this appraisal.

6 65. Mr. Spears understood he was purchasing a credible, lawful appraisal  
7 and had no reason to doubt the certification in the appraisal report and therefore  
8 believed that the appraisal done on his property was performed independently,  
9 objectively, without undue influence or bias to affect the value of the home, and was  
10 otherwise a credible, lawful appraisal done in compliance with applicable law.

11 66. Contrary to Mr. Spears' belief and unbeknownst to him until shortly  
12 before filing this Complaint, the appraisal for the property that was the subject of his  
13 WaMu loan was created pursuant to the scheme described in this Complaint and  
14 therefore Mr. Spears did not receive the independent, objective, unbiased and  
15 credible appraisal done in compliance with applicable law for which he paid, since no  
16 such appraisal was performed by WaMu, EA, LSI or their agents. Mr. Spears has  
17 been damaged thereby.

18 **DEFENDANTS' CONCEALMENT OF ITS SCHEME**

19 67. WaMu's, EA's and LSI's scheme to conduct and charge Plaintiffs and  
20 the Class for appraisals for WaMu home loans that were neither independent,  
21 objective, impartial, unbiased, credible or in compliance with USPAP and applicable  
22 law was never disclosed to Plaintiffs or any Class member by Defendants.

23 68. Nor did Defendants give Plaintiffs or the Class any reason to suspect  
24 that there were any problems with their appraisals. Indeed, EA and LSI were  
25 recognized, experienced appraisal companies who retained certified appraisers who  
26 prepared reports that on the surface appeared to have all of the earmarks of  
27 legitimate, independent, objective, unbiased, credible and lawful appraisals. The  
28 appraisal reports even included the appraiser's certification that the report was done

1 independently, objectively, impartially and in compliance with USPAP standards and  
2 applicable law.

3 69. Moreover, it was traditional that lenders, like WaMu, would obtain  
4 appraisals of properties in connection with the home loans and would provide the  
5 appraisal reports to borrowers and would charge the borrowers for the reports. In  
6 other words, without disclosure of Defendants' arrangement, Plaintiffs and the Class  
7 could not have reasonably suspected that there was anything wrong with the appraisal  
8 for which they were each charged.

9 70. The first time Defendants' scheme was publically revealed was in the  
10 Fall of 2007 when the New York Attorney General announced its investigation and  
11 complaint against EA for conspiring with WaMu to create false appraisals for WaMu  
12 home loans. It was only upon and after the New York Attorney General's  
13 announcement in the Fall of 2007 that Plaintiffs became aware of Defendants'  
14 scheme, and that Class members could have become aware of Defendants' scheme.

### 15 **CLASS ACTION ALLEGATIONS**

16 71. Plaintiffs bring this action on behalf of themselves and on behalf of all  
17 other members of the Class ("Class"), defined as all persons in the United States who  
18 received a home loan with WaMu and received an appraisal performed by EA or LSI.  
19 Excluded from the Class are WaMu's, EA's, and LSI's officers, directors and  
20 managerial employees, and any of WaMu's, EA's, or LSI's subsidiary or affiliated  
21 entities and any of the judges of the Court before which this case is pending.

22 72. There are thousands of class members who are geographically dispersed  
23 throughout the United States, including California. Therefore, individual joinder of  
24 all members of the Class would be impracticable.

25 73. Common questions of law or fact exist as to all members of the Class.  
26 These questions predominate over the questions affecting only individual class  
27 members. These common legal or factual questions include:

28 a. Whether WaMu entered into an agreement with EA and/or LSI to

1 procure appraisal services that were not performed by independent, unbiased  
2 appraisers as required by law;

3 b. Whether Defendants had and have policies, practices, or  
4 procedures that undermine the possibility that Plaintiffs and the Class received  
5 credible appraisals done in compliance with USPAP and applicable law;

6 c. Whether WaMu, through its agreement with EA and/or LSI, was  
7 able to control the appraisal process, by its loan origination personnel or otherwise,  
8 by having either EA or LSI provide higher appraised values for homes than EA's or  
9 LSI's appraiser had initially concluded or than was the actual fair market value of  
10 the home;

11 d. Whether EA and/or LSI agreed with WaMu to provide WaMu  
12 with appraisers who were selected by WaMu to be on WaMu's Proven Appraiser List  
13 (or the WaMu Select panel);

14 e. Whether WaMu controlled and/or manipulated the pool of  
15 appraisers on WaMu's Proven Appraiser List;

16 f. Whether the agreements between WaMu, EA and LSI constitute a  
17 civil conspiracy;

18 g. Whether Defendants' actions described herein violate the Real  
19 Estate Settlement Procedures Act, 12 U.S.C. §2607;

20 h. Whether Defendants' actions described herein violate California's  
21 Business and Professions Code, sections 17200 *et seq.*;

22 i. Whether Defendants' actions violate California's Consumer Legal  
23 Remedies Act, California Civil Code sections 1750 *et seq.*;

24 j. Whether Defendants breached their contracts with Plaintiffs and  
25 the Class;

26 k. The appropriate measure of damages and/or restitution.

27 74. Plaintiffs' claims are typical of the claims of the Class, in that Plaintiffs  
28 took out home mortgage loans with Defendant WaMu and their home appraisals were



1 procured for them by WaMu through EA and/or LSI. Plaintiffs, therefore, are no  
2 different in any relevant respect from any other Class member, and the relief sought  
3 is common to the Class.

4 75. Plaintiffs are adequate representatives of the Class because their  
5 interests do not conflict with the interests of the class members they seek to represent,  
6 and they have retained counsel competent and experienced in conducting complex  
7 class action litigation. Plaintiffs and their counsel will adequately protect the  
8 interests of the Class.

9 76. A class action is superior to other available means for the fair and  
10 efficient adjudication of this dispute. The damages suffered by each individual class  
11 member likely will be relatively small, especially given the burden and expense of  
12 individual prosecution of the complex litigation necessitated by Defendants' conduct.  
13 Thus, it would be virtually impossible for the class members individually to  
14 effectively redress the wrongs done to them. Moreover, even if the class members  
15 could afford individual actions, it would still not be preferable to class wide  
16 litigation. Individualized actions present the potential for inconsistent or  
17 contradictory judgments. By contrast, a class action presents far fewer management  
18 difficulties and provides the benefits of single adjudication, economies of scale, and  
19 comprehensive supervision by a single court.

20 77. In the alternative, the Class may be certified because Defendants have  
21 acted or refused to act on grounds generally applicable to the Class, thereby making  
22 appropriate preliminary and final equitable relief with respect to the Class as a whole.

23 **FIRST CLAIM FOR RELIEF**

24 **(Against Defendants' for Violation of RESPA, 12 U.S.C. §2607)**

25 78. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint  
26 and restate them as if they were fully written herein.

27 79. Under 12 U.S.C. §2607(b) of RESPA, "[n]o person shall give and no  
28 person shall accept any portion, split, or percentage of any charge made or received

1 for the rendering of a real estate service in connection with a transaction involving a  
2 federally related mortgage loan other than for services actually performed.”

3 80. Plaintiffs and the Class entered federally related mortgage loans with  
4 WaMu on or after June 1, 2006.

5 81. In connection with these WaMu loans, Plaintiffs and the Class were  
6 charged for appraisals WaMu procured for them through EA and LSI that were  
7 certified in the appraisal report to be credible, independent, objective, unbiased, and  
8 performed in compliance with USPAP and applicable law. As described throughout  
9 this Complaint, no such appraisals were performed by Defendants and the appraisals  
10 for which Plaintiffs and the Class were charged by Defendants were neither  
11 independent, objective, unbiased or performed in compliance with USPAP or  
12 applicable law, in violation of 12 U.S.C. §2607(b) of RESPA. As such, the  
13 appraisals Plaintiffs and the Class received from WaMu, EA and LSI were not  
14 appraisals at all in that they could not be relied upon at all since they had not been  
15 performed in compliance with the applicable legal and professional standards. In  
16 other words, the appraisals Plaintiffs and the Class received were not worth the paper  
17 on which they were printed and were otherwise valueless.

18 82. Plaintiffs and the Class never received the appraisal service for which  
19 they were charged by Defendants and have been damaged thereby.

20 83. Under 12 U.S.C. §2607(a) of RESPA, “[n]o person shall give and no  
21 person shall accept any fee, kickback, or thing of value pursuant to any agreement or  
22 understanding, oral or otherwise, that business incident to or part of a real estate  
23 settlement service involving a federally related mortgage loan shall be referred to any  
24 person.”

25 84. As described throughout this Complaint, WaMu entered into an  
26 agreement or understanding with EA and LSI specifying that in exchange for WaMu  
27 steering to EA and LSI all, or most, of the appraisal business for WaMu residential  
28 loans, EA and LSI would cooperate with WaMu to ensure that the appraisals

1 established property values sufficient to support the WaMu residential loan amounts  
2 regardless of the true market value of the properties that were the subject of the  
3 WaMu home loans.

4 85. To facilitate WaMu's, EA's and LSI's agreement or understanding, EA  
5 and LSI agreed to use (for WaMu home loans) appraisers that WaMu's loan  
6 origination staff selected to be on its Proven Appraiser List based on these  
7 individuals providing WaMu with sufficiently high appraisals to financially benefit  
8 both WaMu and its loan origination staff. In return, WaMu demanded that EA and  
9 LSI pay appraisers on its Proven Appraiser List a 20% premium over what EA's and  
10 LSI's staff or third party appraisers were paid. Those appraisers who did not provide  
11 WaMu with the desired high appraisal values were removed from WaMu's Proven  
12 Appraiser List by WaMu's loan origination staff, and were thereafter prohibited from  
13 providing appraisals for WaMu, and could not get the 20% appraisal premium.  
14 Appraisers on WaMu's Proven Appraiser List have a financial interest in each and  
15 every WaMu home loan mortgage transaction that they perform appraisal services  
16 for, both for the immediate 20% additional fee, as well as future appraisals for WaMu  
17 at the additional 20% fee.

18 86. WaMu benefitted from this arrangement by securing more high value  
19 home mortgages that it could bundle and securitize for substantial profits, and EA  
20 and LSI benefitted from this arrangement by securing a steady stream of appraisal  
21 work on WaMu home loans. Appraisers on WaMu's Proven Appraiser List who  
22 were retained by EA and LSI to perform appraisals for WaMu home loans benefitted  
23 from this arrangement by receiving a 20% premium in return for their participation in  
24 this unlawful arrangement with WaMu, EA and LSI.

25 87. Plaintiffs and the Class were damaged by Defendants' arrangement in  
26 that they never received the appraisal service for which they were charged by  
27 Defendants and instead unwittingly received unreliable, biased appraisals that were  
28 the basis of the mortgage transactions they entered with WaMu.

**SECOND CLAIM FOR RELIEF**

**(Against Defendants for Unfair Business Practices in Violation of  
Business & Professions Code §§17200, *et seq.*)**

88. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint and restate them as if they were fully written herein.

89. The UCL defines unfair business competition to include any “unlawful, unfair or fraudulent” act or practice. Cal. Bus. & Prof. Code §17200.

90. A business practice is “unlawful” under the Unfair Competition Law if it is forbidden by law, including state or federal laws or regulations.

91. The Code of Federal Regulations provides that for independent contractors or “fee” appraisers, the appraiser shall “have no direct or indirect interest, financial or otherwise, in the property or the transaction.” 12 C.F.R. 34.45. In addition, the Uniform Standards of Professional Appraisal Practice (“USPAP”), which are incorporated into federal law by 12 C.F.R. § 34.44, and into the state law of many, if not all states, including California (*see* California Business and Professions Code §11319) requires appraisers to perform a credible appraisal done in compliance with USPAP standards, which includes requiring that their appraisals be conducted independently: “An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests. In appraisal practice, an appraiser must not perform as an advocate for any party or issue.” USPAP Ethics Rules (Conduct).

92. USPAP also requires that “[e]ach written real property appraisal report must contain a signed certification that is similar in content to the following form:

I certify that, to the best of my knowledge and belief:

- the statements of fact contained in this report are true and correct.
- the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.

- 1 - I have no (or the specified) present or prospective interest in the property  
2 that is the subject of this report and no (or the specified) personal  
interest with respect to the parties involved.
- 3 - I have no bias with respect to the property that is the subject of this  
4 report or to the parties involved with this assignment.
- 5 - my engagement in this assignment was not contingent upon developing  
or reporting predetermined results.
- 6 - my compensation for completing this assignment is not contingent upon  
7 the development or reporting of a predetermined value or direction in  
value that favors the cause of the client, the amount of the value opinion,  
8 the attainment of a stipulated result, or the occurrence of a subsequent  
event directly related to the intended use of this appraisal.
- 9 - my analyses, opinions, and conclusions were developed, and this report  
10 has been prepared, in conformity with the *Uniform Standards of  
Professional Appraisal Practice*."

11 The appraisal reports for the WaMu loans that are the subject of this Complaint  
12 contained this or a materially identical certification.

13 93. The same or similar USPAP ethics rules, standards and certifications are  
14 required for appraisal reviewers (i.e., appraisers who perform a quality review of  
15 another appraiser's report). Such appraisal reviews were performed by EA and LSI  
16 appraisal reviewers on the appraisal reports for the WaMu loans that are the subject  
17 of this Complaint.

18 94. WaMu, EA, and LSI have and continue to violate the "unlawful" prong  
19 of the UCL through the creation and use of WaMu's Proven Appraiser List because  
20 appraisers on this list clearly have an interest in each WaMu home appraisal  
21 transaction, and are not unbiased and independent. WaMu's loan origination staff  
22 selects appraisers to be on its Proven Appraiser List based on these individuals  
23 providing WaMu with sufficiently high appraisals to financially benefit both WaMu  
24 and its loan origination staff. In return, WaMu demands that EA and LSI pay  
25 appraisers on its Proven Appraiser List a 20% premium over what EA's and LSI's  
26 staff or third party appraisers are paid. Those appraisers who do not provide WaMu  
27 with the desired high appraisal values are removed from WaMu's Proven Appraiser  
28 List by WaMu's loan origination staff, and are thereafter prohibited from providing

1 appraisals for WaMu, and can not get the 20% appraisal premium. Appraisers on  
2 WaMu's Proven Appraiser List clearly have a financial interest in each and every  
3 WaMu home loan mortgage transaction that they perform appraisal services for, both  
4 for the immediate 20% additional fee, as well as future appraisals for WaMu at the  
5 additional 20% fee.

6 95. WaMu, EA and LSI conspired to allow WaMu's loan origination staff to  
7 select individuals to be on WaMu's Proven Appraiser List even though federal and  
8 state law prohibits loan producers from having a direct influence on appraisers. *See*  
9 Office of Thrift Supervision ("OTS"), published "Frequently Asked Questions on the  
10 Appraisal Regulations and the Interagency Statement on Independent Appraisal and  
11 Evaluation Functions." WaMu, EA, and LSI also agreed that WaMu's loan  
12 origination staff would have control over deciding which individuals would stay on  
13 the list in violation of federal laws which prohibit loan producers from having a  
14 direct influence on appraisers.

15 96. Through these agreements, the appraisers on WaMu's Proven Appraiser  
16 List retained by EA and LSI for WaMu home loans are not acting independently,  
17 objectively and in compliance with USPAP standards as federal and state law  
18 mandates. Rather, WaMu, EA and LSI permit and have agreed to permit WaMu's  
19 loan origination staff direct contact with appraisers to influence their ultimate  
20 appraisal decision, instead of allowing them to act in an unbiased, independent  
21 fashion. Moreover, the appraisal reports that these appraisers create for WaMu home  
22 loans, which are approved by EA and LSI in their review process, are not  
23 independent, objective, unbiased, credible or performed in compliance with USPAP  
24 standards as required by federal and state law.

25 97. Additionally, as the violation of any law may serve as the predicate for a  
26 violation of the unlawful prong of the Unfair Competition Law, Plaintiffs further  
27 allege that Defendants, in violating the Real Estate Settlement Procedures Act, the  
28 Consumers Legal Remedies Act, and the common law of contract, violated the Unfair



1 Competition Law.

2 98. Because of Defendants' unlawful acts and practices, Defendants injured  
3 Plaintiffs and members of the Class and obtained, and continue to unfairly obtain,  
4 money and property from Plaintiffs and members of the Class. Thus, Plaintiffs  
5 request that this Court cause Defendants to restore this money to Plaintiffs and all  
6 Class members, and to enjoin Defendants from continuing to violate the Unfair  
7 Competition Law as discussed herein. Otherwise, the Class may be irreparably  
8 harmed and/or denied an effective and complete remedy if such an order is not  
9 granted.

10 **THIRD CLAIM FOR RELIEF**

11 **(Against Defendants for Unfair Business Practices in Violation of**  
12 **Business & Professions Code §§17200, *et seq.*)**

13 99. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint  
14 and restate them as if they were fully written herein.

15 100. The UCL defines unfair business competition to include any "unlawful,  
16 unfair or fraudulent" act or practice. Cal. Bus. & Prof. Code §17200.

17 101. A business act or practice is "unfair" under the Unfair Competition Law  
18 if the reasons, justifications and motives of the alleged wrongdoer are outweighed by  
19 the gravity of the harm to the alleged victims.

20 102. Defendants have violated, and continue to violate, the "unfair" prong of  
21 the UCL in the following ways:

22 a. Agreeing to allow and allowing WaMu to create its Proven  
23 Appraiser List which is constituted of appraisers WaMu hand selected as being ones  
24 that would provide WaMu with high home appraisal values;

25 b. Agreeing to allow and allowing WaMu to limit its Proven  
26 Appraiser List to only those appraisers WaMu knew would provide it with high home  
27 appraisal values;

28 c. Agreeing to allow and allowing all of WaMu's home appraisals to

1 be performed by only appraisers on WaMu's Proven Appraiser List;

2 d. Agreeing to allow and allowing WaMu control over the Proven  
3 Appraiser List by allowing WaMu, or members of WaMu's loan origination staff, to  
4 choose appraisers to be added to the list, or to choose appraiser to be taken off the  
5 list;

6 e. Agreeing to allow and allowing WaMu to dictate a financial  
7 incentive for appraisers on WaMu's Proven Appraiser List to inflate appraisals;

8 f. Agreeing to provide and providing appraisers on WaMu's Proven  
9 Appraiser List a financial interest in each appraisal performed for WaMu;

10 g. Agreeing to provide and providing appraisers on WaMu's Proven  
11 Appraiser List a financial interest in remaining on WaMu's Proven Appraiser List by  
12 paying these appraisers a higher per-appraisal fee, and by informing them that if they  
13 did not provide appraisals at a high enough value for WaMu, they would be removed  
14 from the Proven Appraiser List;

15 h. Agreeing to allow and allowing WaMu the ability to overrule  
16 home appraisal values WaMu believed to be too low through the "rebuttal" or  
17 "Reconsideration of Value" system;

18 i. Agreeing to allow and allowing WaMu's loan origination staff to  
19 have direct contact with LSI, EA, and their appraisers, with regard to appraisals  
20 performed for home loans for WaMu; and,

21 j. Failing to provide home loan borrowers with unbiased,  
22 independent and credible home appraisals performed in compliance with USPAP  
23 standards.

24 103. The gravity of the harm to members of the Class resulting from such  
25 unfair acts and practices outweighs any conceivable reasons, justifications and/or  
26 motives of Defendants for engaging in such deceptive acts and practices. By  
27 committing the acts and practices alleged above, Defendants have engaged, and  
28 continue to be engaged, in unfair business practices within the meaning of California

1 Business and Professions Code §§17200 *et seq.*

2 104. Through their unfair acts and practices, Defendants have obtained, and  
3 continue to unfairly obtain, money from members of the Class. As such, Plaintiffs  
4 request that this Court cause Defendants to restore this money to Plaintiffs and all  
5 Class members, and to enjoin Defendants from continuing to violate the Unfair  
6 Competition Law as discussed herein. Otherwise, the Class may be irreparably  
7 harmed and/or denied an effective and complete remedy if such an order is not  
8 granted.

9 **FOURTH CLAIM FOR RELIEF**

10 **(Against Defendants for Unfair Business Practices in Violation of**  
11 **Business & Professions Code §§17200, *et seq.*)**

12 105. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint  
13 and restate them as if they were fully written herein.

14 106. The UCL defines unfair business competition to include any “unlawful,  
15 unfair or fraudulent” act or practice. Cal. Bus. & Prof. Code §17200.

16 107. A business act or practice is “fraudulent” under the Unfair Competition  
17 Law if it actually deceives or is likely to deceive members of the consuming public.

18 108. Defendants’ acts and practices as described herein have deceived and/or  
19 are likely to deceive members of the consuming public, including Plaintiffs and the  
20 Class. Specifically, Defendants offered to provide Plaintiffs and members of the  
21 Class with independent, unbiased and credible home appraisals performed in  
22 compliance with USPAP standards, and, in fact, certified such in the appraisal reports  
23 prepared for and disseminated to Plaintiffs and the Class by Defendants. Yet, despite  
24 this offer and promise, Defendants’ failed to provide independent, unbiased and  
25 credible home appraisals in the following ways:

26 a. Agreeing to allow and allowing WaMu to create its Proven  
27 Appraiser List which is constituted of appraisers WaMu hand selected as being ones  
28 that would provide WaMu with high home appraisal values;

1           b.     Agreeing to allow and allowing WaMu to limit its Proven  
2 Appraiser List to only those appraisers WaMu knew would provide it with high home  
3 appraisal values;

4           c.     Agreeing to allow and allowing all of WaMu's home appraisals to  
5 be performed by only appraisers on WaMu's Proven Appraiser List;

6           d.     Agreeing to allow and allowing WaMu control over the Proven  
7 Appraiser List by allowing WaMu, or members of WaMu's loan origination staff, to  
8 choose appraisers to be added to the list, or to choose appraiser to be taken off of the  
9 list;

10          e.     Agreeing to allow and allowing WaMu to dictate a financial  
11 incentive for appraisers on WaMu's Proven Appraiser List;

12          f.     Agreeing to provide and providing appraisers on WaMu's Proven  
13 Appraiser List a financial interest in each appraisal performed for WaMu;

14          g.     Agreeing to provide and providing appraisers on WaMu's Proven  
15 Appraiser List a financial interest in remaining on WaMu's Proven Appraiser List by  
16 paying these appraisers a higher per-appraisal fee, and by informing them that if they  
17 did not provide appraisals at a high enough value for WaMu, they would be removed  
18 from the Proven Appraiser List;

19          h.     Agreeing to allow and allowing WaMu the ability to overrule  
20 home appraisal values WaMu believed to be too low through the "rebuttal" or  
21 "Reconsideration of Value" system;

22          i.     Agreeing to allow and allowing WaMu's loan origination staff to  
23 have direct contact with LSI, EA, and/or their appraisers, regarding appraisals  
24 performed for WaMu home loans; and,

25          j.     Failing to provide home loan borrowers with unbiased,  
26 independent and credible home appraisals performed in compliance with USPAP  
27 standards.

28       109. As a result of the conduct described above, Defendants have been, and

1 will continue to be, unjustly enriched at the expense of Plaintiffs and members of the  
2 proposed Class. Specifically, Defendants have been unjustly enriched by the profits  
3 and revenue it has obtained from Plaintiffs and the Class from the home appraisals  
4 charged to them when taking out WaMu loans.

5 110. Because of Defendants' unlawful acts and practices, Defendants injured  
6 Plaintiffs and members of the class and obtained, and continue to unfairly obtain,  
7 money and property from Plaintiffs and members of the Class. Thus, Plaintiffs  
8 request that this Court cause Defendants to restore this money to Plaintiffs and all  
9 Class members, and to enjoin Defendants from continuing to violate the Unfair  
10 Competition Law as discussed herein. Otherwise, the Class may be irreparably  
11 harmed and/or denied an effective and complete remedy if such an order is not  
12 granted.

13 **FIFTH CLAIM FOR RELIEF**

14 **(Against Defendants for Violation of the Consumers Legal Remedies Act,  
15 California Civil Code §1750, *et seq.*)**

16 111. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint  
17 and restate them as if they were fully written herein.

18 112. This claim for relief is brought pursuant to the Consumers Legal  
19 Remedies Act, California Civil Code §1750, *et seq.* (the "CLRA").

20 113. Plaintiffs and each member of the proposed Class who took out WaMu  
21 home loans, and had appraisals performed by EA and/or LSI are "consumers" within  
22 the meaning of *Civil Code* §1761(d).

23 114. The home appraisals sold by Defendants to Plaintiffs and Class members  
24 are "services" within the meaning of *Civil Code* §1761(b).

25 115. Defendants have violated, and continue to violate, the CLRA in at least  
26 the following respects:

27 a. in violation of *Civil Code* §1770(a)(7), Defendants represented  
28 their home appraisal services to be of a particular standard or quality, (*i.e.*, being

1 credible, independent, unbiased and performed in compliance with USPAP  
2 standards), which they were not.

3 116. Plaintiffs and the members of the Class request that this Court enjoin  
4 Defendants from continuing to engage in the unlawful and deceptive methods, acts  
5 and practices alleged above, pursuant to *California Civil Code* §1780(a)(2). Unless  
6 Defendants are permanently enjoined from continuing to engage in such violations of  
7 the CLRA, future consumers taking out WaMu home loans will be damaged by their  
8 acts and practices in the same way as have Plaintiffs and the members of the  
9 proposed Class.

10 117. Pursuant to *Civil Code* §1782, Plaintiffs notified Defendants in writing  
11 of the particular violations of *Civil Code* §1770 and demanded that Defendants  
12 rectify the problems associated with its illegal behavior detailed above, which actions  
13 are in violation of *Civil Code* §1770.

14 118. Defendants failed within 30 days of receipt of Plaintiffs notice of  
15 demand to give, or agree to give within a reasonable time to the Class, including  
16 Plaintiffs, the requested remedies. Pursuant to *Civil Code* §1782(b) and (d), Plaintiffs  
17 file this Amended Complaint and seek the following damages as provided for in *Civil*  
18 *Code* §1780:

- 19 a. actual damages in excess of the jurisdictional limits of this Court;
- 20 b. an order enjoining methods, acts and/or practices, as outlined
- 21 above, which are in violation of *Civil Code* §1770;
- 22 c. punitive damages;
- 23 d. any other relief which the Court deems proper, and;
- 24 e. court costs and attorneys' fees.

#### 25 **SIXTH CLAIM FOR RELIEF**

#### 26 **(Against Defendants for Breach of Contract)**

27 119. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint  
28 and restate them as if they were fully written herein.

1           120. Plaintiffs and the other Class members on or after June 1, 2006 took out  
2 a WaMu home loan with WaMu. In connection with these WaMu home loans,  
3 WaMu, on behalf of and for Plaintiffs and the Class, undertook and agreed to procure  
4 and did procure appraisals from EA and/or LSI for the homes that were the subject of  
5 Plaintiffs' and Class members' WaMu loans. EA and/or LSI undertook and agreed to  
6 provide and provided Plaintiffs and the Class with these appraisals directly and/or by  
7 delivery to them through WaMu. Plaintiffs and Class members were charged for  
8 these appraisals as reflected in their Settlement Statements (HUD-1) or other loan  
9 documents.

10           121. As evidenced by the loan documents that accompanied the home loan  
11 transaction, the contracts between Plaintiffs and the Class and Defendants show that  
12 the Defendants were to provide a home appraisal which, pursuant to applicable laws  
13 and standards as certified in the appraisal reports, would be performed by an  
14 independent, objective and unbiased appraiser, and the appraisal reports would be  
15 credible, objective, unbiased and independent home appraisal done in compliance  
16 with USPAP standards. Moreover, the appraisal reports Plaintiffs and the Class  
17 received from Defendants specifically acknowledge that borrowers (i.e., Plaintiffs  
18 and the Class) would receive the appraisal report and may rely upon them in their  
19 mortgage financing transaction with the lender (i.e., WaMu).

20           122. Plaintiffs and the Class performed all conditions of the contracts to be  
21 performed by them, except to the extent they were lawfully excused from such  
22 performance. Defendants breached these contracts with Plaintiffs and each Class  
23 member by not providing a home appraisal which was performed by an independent,  
24 objective and unbiased appraiser, and by not providing appraisal reports that were  
25 credible, objective, unbiased, independent, and done in compliance with USPAP  
26 standards and applicable law. In other words, Plaintiffs and the Class were charged  
27 for a lawful appraisal which was never performed by Defendants.

28           123. As a direct and proximate result of the foregoing conduct, Plaintiffs and



1 the Class members have suffered damages, including economic losses, warranting  
2 compensatory damages as well as injunctive relief, declaratory relief and other  
3 equitable relief deemed just and proper by the Court.

4 **SEVENTH CLAIM FOR RELIEF**

5 **(Against Defendants for Quasi-Contract/Unjust Enrichment)**

6 124. Plaintiffs hereby incorporate by reference each and every allegation  
7 contained in the preceding paragraphs of this Complaint as if fully rewritten herein.  
8 Plaintiffs plead this Count in the alternative.

9 125. Defendants' engaged in unlawful conduct by representing to Plaintiffs  
10 and the members of the Class that their home appraisals provided for the purpose of  
11 obtaining a home loan would be performed by an independent and unbiased appraiser  
12 and that the appraisal report would be credible, objective and done in compliance  
13 with USPAP standards, but actually providing home appraisals performed by a  
14 biased, non-independent appraiser and providing appraisal reports that were not  
15 credible, objective or done in compliance with USPAP standards as described  
16 throughout this Complaint, is unlawful

17 126. Defendants took monies from Plaintiffs and Class members in exchange  
18 for what were supposed to be independent, objective, unbiased, credible appraisals  
19 and appraisal reports done in compliance with USPAP standards, but did not provide  
20 such appraisals and appraisal reports. Defendants have been unjustly enriched at the  
21 expense of Plaintiffs and the Class members as a result of their unlawful conduct  
22 alleged herein, thereby creating a quasi-contractual obligation on Defendants to  
23 restore these ill-gotten gains to Plaintiffs and the Class.

24 127. As a direct and proximate result of Defendants' unjust enrichment,  
25 Plaintiffs and Class members are entitled to restitution in an amount to be proved at  
26 trial.

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28 ///

**PRAYER**

WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of the other members of the Class, request an award and relief as follows:

A. An order certifying that this action is properly brought and may be maintained as a class action, that Plaintiffs be appointed Class Representative and Plaintiffs' counsel be appointed Class Counsel.

B. Compensatory damages, except as to Counts Two, Three, Four.

C. Treble damages as to Count One.

D. Punitive damages as to Count Five.

E. Restitution in such amount that Plaintiffs and all Class members paid for their home appraisals, or the profits, charges and fees Defendants obtained from them.

F. An order enjoining Defendants from maintaining and utilizing WaMu's Proven Appraiser List, or any other mechanism by which WaMu has control over the appraiser selected to perform WaMu's home appraisals or value the appraiser sets for the subject property.

G. An order awarding Plaintiffs their costs of suit, including pre and post-judgment interest.

H. An order awarding Plaintiffs' counsel's attorneys' fees.

I. An order requiring an accounting for, and imposition of a constructive trust upon, all monies received by Defendants as a result of the unfair, fraudulent and unlawful conduct alleged herein.

J. Such other and further relief as may be deemed necessary or appropriate.

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**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury on all causes of action and issues so triable.

Dated: March 28, 2008

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